

1 SENATE BILL 395

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Cynthia Nava

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7
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; PROVIDING THAT CERTAIN
12 SCHOOL CONSTRUCTION PROJECTS MAY BE EXEMPTED FROM SOME STATE
13 OVERSIGHT; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO
14 CHANGE THE CRITERIA FOR OFFSETTING AMOUNTS FROM STATE GRANTS,
15 TO REQUIRE SPACE UTILIZATION TO BE CONSIDERED, TO ALLOW
16 ADDITIONAL GRANTS TO CERTAIN SCHOOL DISTRICTS, TO INCREASE
17 GRANTS TO SCHOOLS FOR LEASE PAYMENTS, TO ALLOW CERTAIN
18 FACILITIES TO BE PURCHASED WITH STATE GRANTS AND TO EXTEND THE
19 TIME FOR WHICH CERTAIN EXPENDITURES MAY BE MADE; AMENDING THE
20 PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO AUTHORIZE THE
21 IMPOSITION OF AN ADDITIONAL MILL AND TO INCREASE THE STATE
22 DISTRIBUTION; AMENDING THE PUBLIC SCHOOL BUILDINGS ACT TO ALLOW
23 REVENUE TO BE USED FOR PROJECT MANAGEMENT, TO INCREASE THE
24 PERIOD FOR WHICH A TAX MAY BE IMPOSED AND TO AUTHORIZE DIRECT
25 PAYMENT OF REVENUE TO CHARTER SCHOOLS; ALLOWING CHARTER SCHOOLS

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1 AND SCHOOL DISTRICTS TO ENTER INTO LEASE AGREEMENTS; ALLOWING
2 CERTAIN TYPES OF LEASE-PURCHASE ARRANGEMENTS TO BE FUNDED WITH
3 CERTAIN STATE GRANTS AND CERTAIN TAX REVENUES; RECOMPILING A
4 CERTAIN SECTION OF THE PUBLIC SCHOOL CODE; RECONCILING MULTIPLE
5 AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2006; MAKING
6 APPROPRIATIONS.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. Section 22-20-1 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 270, as amended by Laws 2006, Chapter 94,
11 Section 54 and by Laws 2006, Chapter 95, Section 1) is amended
12 to read:

13 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
14 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY
15 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

16 A. Except as provided in Subsection D of this
17 section, each local school board or governing body of a charter
18 school shall secure the approval of the director of the public
19 school facilities authority or the director's designee prior to
20 the construction or letting of contracts for construction of
21 any school building or related school structure or before
22 reopening an existing structure that was formerly used as a
23 school building but that has not been used for that purpose
24 during the previous year. A written application shall be
25 submitted to the director requesting approval of the

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1 construction, and, upon receipt, the director shall forward a
2 copy of the application to the secretary. The director shall
3 prescribe the form of the application, which shall include the
4 following:

- 5 (1) a statement of need;
- 6 (2) the anticipated number of students
7 affected by the construction;
- 8 (3) the estimated cost;
- 9 (4) a description of the proposed construction
10 project;
- 11 (5) a map of the area showing existing school
12 attendance centers within a five-mile radius and any
13 obstructions to attending the attendance centers, such as
14 railroad tracks, rivers and limited-access highways; and
15 (6) [~~such~~] other information as may be
16 required by the director.

17 B. The director or the director's designee shall
18 give approval to an application if the director or designee
19 reasonably determines that:

- 20 (1) the construction will not cause an
21 unnecessary proliferation of school construction;
- 22 (2) the construction is needed in the school
23 district or by the charter school;
- 24 (3) the construction is feasible;
- 25 (4) the cost of the construction is

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1 reasonable;

2 (5) the school district or charter school has
3 submitted a five-year facilities plan that includes:

4 (a) enrollment projections;

5 (b) a current preventive maintenance
6 plan;

7 (c) the capital needs of charter schools
8 [~~located in~~] chartered by the school district, if applicable,
9 or the capital needs of the charter school if it is state-
10 chartered; and

11 (d) projections for the facilities
12 needed in order to maintain a full-day kindergarten program;

13 (6) the construction project:

14 (a) is in compliance with the statewide
15 adequacy standards adopted pursuant to the Public School
16 Capital Outlay Act; and

17 (b) is appropriately integrated into the
18 school district or charter school five-year facilities plan;

19 (7) the school district or charter school is
20 financially able to pay for the construction; and

21 (8) the secretary has certified that the
22 construction will support the educational program of the school
23 district or charter school.

24 C. Within thirty days after the receipt of an
25 application filed pursuant to this section, the director or the

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1 director's designee shall in writing notify the local school
2 board or governing body of a charter school making the
3 application and the department of approval or disapproval of
4 the application.

5 D. By rule, the public school capital outlay
6 council may:

7 (1) exempt classes or types of construction
8 from the application and approval requirements of this section;
9 or

10 (2) exempt classes or types of construction
11 from the requirement of approval but, if the council determines
12 that information concerning the construction is necessary for
13 the maintenance of the facilities assessment database, require
14 a description of the proposed construction project and related
15 information to be submitted to the public school facilities
16 authority.

17 ~~[D-]~~ E. A local school board or governing body of a
18 charter school shall not enter into a contract for the
19 construction of a public school facility, including contracts
20 funded with insurance proceeds, unless the contract contains
21 provisions requiring the construction to be in compliance with
22 the statewide adequacy standards adopted pursuant to the Public
23 School Capital Outlay Act, provided that, for a contract funded
24 in whole or in part with insurance proceeds:

25 (1) the cost of settlement of any insurance

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1 claim shall not be increased by inclusion of the insurance
2 proceeds in the construction contract; and

3 (2) insurance claims settlements shall
4 continue to be governed by insurance policies, memoranda of
5 coverage and rules related to them.

6 [~~E~~] F. Public school facilities shall be
7 constructed pursuant to state standards or codes promulgated
8 pursuant to the Construction Industries Licensing Act and rules
9 adopted pursuant to Section 59A-52-15 NMSA 1978 for the
10 prevention and control of fires in public occupancies.
11 Building standards or codes adopted by a municipality or county
12 do not apply to the construction of public school facilities,
13 except those structures constructed as a part of an educational
14 program of a school district or charter school.

15 [~~F~~] G. The provisions of Subsection [~~E~~] F of this
16 section relating to fire protection shall not be effective
17 until the public regulation commission has adopted the
18 International Fire Code and all standards related to that code.

19 [~~G~~] H. As used in this section, "construction"
20 means any project for which the construction industries
21 division of the regulation and licensing department requires
22 permitting and for which the estimated total cost exceeds two
23 hundred thousand dollars (\$200,000)."

24 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
25 Chapter 235, Section 4, as amended) is amended to read:

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1 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
2 USE.--

3 A. [~~There is created~~] The "public school capital
4 outlay fund" is created. Balances remaining in the fund at the
5 end of each fiscal year shall not revert.

6 B. Except as provided in Section 22-24-5.8 NMSA
7 1978 and in Subsections G through L of this section, money in
8 the fund may be used only for capital expenditures deemed by
9 the council necessary for an adequate educational program.

10 C. The council may authorize the purchase by the
11 public school facilities authority of portable classrooms to be
12 loaned to school districts to meet a temporary requirement.
13 Payment for these purchases shall be made from the fund. Title
14 and custody to the portable classrooms shall rest in the public
15 school facilities authority. The council shall authorize the
16 lending of the portable classrooms to school districts upon
17 request and upon finding that sufficient need exists.

18 Application for use or return of state-owned portable classroom
19 buildings shall be submitted by school districts to the
20 council. Expenses of maintenance of the portable classrooms
21 while in the custody of the public school facilities authority
22 shall be paid from the fund; expenses of maintenance and
23 insurance of the portable classrooms while in the custody of a
24 school district shall be the responsibility of the school
25 district. The council may authorize the permanent disposition

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1 of the portable classrooms by the public school facilities
2 authority with prior approval of the state board of finance.

3 D. Applications for assistance from the fund shall
4 be made by school districts to the council in accordance with
5 requirements of the council. Except as provided in Subsection
6 K of this section, the council shall require as a condition of
7 application that a school district have a current five-year
8 facilities plan, which shall include a current preventive
9 maintenance plan to which the school adheres for each public
10 school in the school district.

11 E. The council shall review all requests for
12 assistance from the fund and shall allocate funds only for
13 those capital outlay projects that meet the criteria of the
14 Public School Capital Outlay Act.

15 F. Money in the fund shall be disbursed by warrant
16 of the department of finance and administration on vouchers
17 signed by the secretary of finance and administration following
18 certification by the council that an application has been
19 approved or an expenditure has been ordered by a court pursuant
20 to Section 22-24-5.4 NMSA 1978. At the discretion of the
21 council, money for a project shall be distributed as follows:

22 (1) up to ten percent of the portion of the
23 project cost funded with distributions from the fund or five
24 percent of the total project cost, whichever is greater, may be
25 paid to the school district before work commences with the

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1 balance of the grant award made on a cost-reimbursement basis;
2 or

3 (2) the council may authorize payments
4 directly to the contractor.

5 G. Balances in the fund may be annually
6 appropriated for the core administrative functions of the
7 public school facilities authority pursuant to the Public
8 School Capital Outlay Act and, in addition, balances in the
9 fund may be expended by the public school facilities authority,
10 upon approval of the council, for project management expenses;
11 provided that:

12 (1) the total annual expenditures from the
13 fund pursuant to this subsection shall not exceed five percent
14 of the average annual grant assistance authorized from the fund
15 during the three previous fiscal years; and

16 (2) any unexpended or unencumbered balance
17 remaining at the end of a fiscal year from the expenditures
18 authorized in this subsection shall revert to the fund.

19 H. Up to thirty million dollars (\$30,000,000) of
20 the fund may be allocated annually by the council in fiscal
21 years 2006 and 2007 for a roof repair and replacement
22 initiative with projects to be identified by the council
23 pursuant to Section 22-24-4.3 NMSA 1978; provided that all
24 money allocated pursuant to this subsection shall be expended
25 prior to September 1, 2008.

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1 I. [~~Up to seven million five hundred thousand~~
2 ~~dollars (\$7,500,000) from~~] The fund may be expended annually by
3 the council in fiscal years 2006 through [~~2010~~] 2020 for grants
4 to school districts for the purpose of making lease payments
5 for classroom facilities, including facilities leased by
6 charter schools. The grants shall be made upon application by
7 the school districts and pursuant to rules adopted by the
8 council; provided that an application on behalf of a charter
9 school shall be made by the school district but, if the school
10 district fails to make an application on behalf of a charter
11 school, the charter school may submit its own application. The
12 following criteria shall apply to the grants:

13 (1) the amount of a grant to a school district
14 shall not exceed:

15 (a) the actual annual lease payments
16 owed for leasing classroom space for schools, including charter
17 schools, in the district; or

18 (b) [~~six hundred dollars (\$600)~~] seven
19 hundred dollars (\$700) multiplied by the number of MEM using
20 the leased classroom facilities; provided that in fiscal year
21 2009 and in each subsequent fiscal year, this amount shall be
22 adjusted by the percentage increase between the penultimate
23 calendar year and the immediately preceding calendar year of
24 the consumer price index for the United States, all items, as
25 published by the United States department of labor; and

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1 provided further that if the total grants awarded pursuant to
2 this paragraph would exceed the total annual amount available,
3 the rate specified in this subparagraph shall be reduced
4 proportionately;

5 (2) a grant received for the lease payments of
6 a charter school may be used by that charter school as a state
7 match necessary to obtain federal grants pursuant to the
8 federal No Child Left Behind Act of 2001;

9 (3) at the end of each fiscal year, any
10 unexpended or unencumbered balance of the appropriation shall
11 revert to the fund; ~~and~~

12 (4) if the lease payments are made pursuant to
13 a financing agreement under which the facilities may be
14 purchased for a price that is reduced according to the lease
15 payments made:

16 (a) a grant shall not be made unless the
17 council determines that the leased facilities meet the
18 statewide adequacy standards; and

19 (b) neither a grant nor any provision of
20 the Public School Capital Outlay Act creates a legal obligation
21 for the school district or charter school to continue the lease
22 from year to year or to purchase the facilities nor does it
23 create a legal obligation for the state to make subsequent
24 grants pursuant to the provisions of this subsection; and

25 (5) the total amount expended from the fund

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1 pursuant to this subsection shall not exceed:

2 (a) seven million five hundred thousand
3 dollars (\$7,500,000) in fiscal year 2007; and

4 (b) in fiscal year 2008 and each
5 subsequent fiscal year, the maximum amount for the previous
6 fiscal year adjusted by the percentage increase between the
7 penultimate calendar year and the immediately preceding
8 calendar year of the consumer price index for the United
9 States, all items, as published by the United States department
10 of labor; and

11 [~~4~~] (6) as used in this subsection:

12 (a) "MEM" means: [~~a~~] 1) the average
13 full-time-equivalent enrollment using leased classroom
14 facilities on the eightieth and one hundred twentieth days of
15 the prior school year; or [~~b~~] 2) in the case of an approved
16 charter school that has not commenced classroom instruction,
17 the estimated full-time-equivalent enrollment that will use
18 leased classroom facilities in the first year of instruction,
19 as shown in the approved charter school application; provided
20 that, after the eightieth day of the school year, the MEM shall
21 be adjusted to reflect the full-time-equivalent enrollment on
22 that date; and

23 (b) "classroom facilities" or "classroom
24 space" includes the space needed, as determined by the minimum
25 required under the statewide adequacy standards, for the direct

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1 administration of school activities.

2 J. In addition to other authorized expenditures
3 from the fund, up to one percent of the average grant
4 assistance authorized from the fund during the three previous
5 fiscal years may be expended in each fiscal year by the public
6 school facilities authority to reimburse the state fire
7 marshal, the construction industries division of the regulation
8 and licensing department and local jurisdictions having
9 authority from the state to permit and inspect projects for
10 expenditures made to permit and inspect projects funded in
11 whole or in part under the Public School Capital Outlay Act.
12 The authority shall enter into contracts with the state fire
13 marshal, the construction industries division or the
14 appropriate local authorities to carry out the provisions of
15 this subsection.

16 K. Pursuant to guidelines established by the
17 council, allocations from the fund may be made to assist school
18 districts in developing and updating five-year facilities plans
19 required by the Public School Capital Outlay Act; provided
20 that:

21 (1) no allocation shall be made unless the
22 council determines that the school district is willing and able
23 to pay the portion of the total cost of developing or updating
24 the plan that is not funded with the allocation from the fund.
25 Except as provided in Paragraph (2) of this subsection, the

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1 portion of the total cost to be paid with the allocation from
2 the fund shall be determined pursuant to the methodology in
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

4 (2) the allocation from the fund may be used
5 to pay the total cost of developing or updating the plan if:

6 (a) the school district has fewer than
7 an average of six hundred full-time-equivalent students on the
8 eightieth and one hundred twentieth days of the prior school
9 year; or

10 (b) the school district meets all of the
11 following requirements: 1) the school district has fewer than
12 an average of one thousand full-time-equivalent students on the
13 eightieth and one hundred twentieth days of the prior school
14 year; 2) the school district has at least seventy percent of
15 its students eligible for free or reduced-fee lunch; 3) the
16 state share of the total cost, if calculated pursuant to the
17 methodology in Paragraph (5) of Subsection B of Section 22-24-5
18 NMSA 1978, would be less than fifty percent; and 4) for all
19 educational purposes, the school district has a residential
20 property tax rate of at least seven dollars (\$7.00) on each one
21 thousand dollars (\$1,000) of taxable value, as measured by the
22 sum of all rates imposed by resolution of the local school
23 board plus rates set to pay interest and principal on
24 outstanding school district general obligation bonds.

25 L. Upon application by a school district,

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1 allocations from the fund may be made by the council for the
2 purpose of demolishing abandoned school district facilities,
3 provided that:

4 (1) the costs of continuing to insure an
5 abandoned facility outweigh any potential benefit when and if a
6 new facility is needed by the school district;

7 (2) there is no practical use for the
8 abandoned facility without the expenditure of substantial
9 renovation costs; and

10 (3) the council may enter into an agreement
11 with the school district under which an amount equal to the
12 savings to the district in lower insurance premiums are used to
13 fully or partially reimburse the fund for the demolition costs
14 allocated to the district."

15 Section 3. Section 22-24-4.1 NMSA 1978 (being Laws 2001,
16 Chapter 338, Section 6, as amended) is amended to read:

17 "22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--
18 CORRECTION.--

19 A. No later than September 1, 2001, the council
20 shall define and develop guidelines, consistent with the codes
21 adopted by the construction industries commission pursuant to
22 the Construction Industries Licensing Act, for school districts
23 to use to identify outstanding serious deficiencies in public
24 school buildings and grounds, including buildings and grounds
25 of charter schools, that may adversely affect the health or

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1 safety of students and school personnel.

2 B. A school district shall use these guidelines to
3 complete a self-assessment of the outstanding health or safety
4 deficiencies within the school district and provide cost
5 projections to correct the outstanding deficiencies.

6 C. The council shall develop a methodology for
7 prioritizing projects that will correct the deficiencies.

8 D. After a public hearing and to the extent that
9 money is available in the fund for such purposes, the council
10 shall approve allocations from the fund on the established
11 priority basis and, working with the school district and
12 pursuant to the Procurement Code, enter into construction
13 contracts with contractors to correct the deficiencies.

14 E. In entering into construction contracts to
15 correct deficiencies pursuant to this section, the council
16 shall include such terms and conditions as necessary to ensure
17 that the state money is expended in the most prudent manner
18 possible and consistent with the original purpose.

19 F. Any deficiency that may adversely affect the
20 health or safety of students or school personnel may be
21 corrected pursuant to this section, regardless of the local
22 effort or percentage of indebtedness of the school district.

23 G. It is the intent of the legislature that all
24 outstanding deficiencies in public schools and grounds that may
25 adversely affect the health or safety of students and school

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1 personnel be identified and awards made pursuant to this
2 section no later than June 30, 2005, and that funds be expended
3 no later than June 30, 2007, provided that the council may
4 extend the expenditure period to no later than June 30, 2008
5 for up to three unfinished projects upon a determination that a
6 project requires the additional time because existing buildings
7 need to be demolished or because of other extenuating
8 circumstances."

9 Section 4. Section 22-24-5 NMSA 1978 (being Laws 1975,
10 Chapter 235, Section 5, as amended) is amended to read:

11 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
12 APPLICATION--GRANT ASSISTANCE.--

13 A. Applications for grant assistance, the approval
14 of applications, the prioritization of projects and grant
15 awards shall be conducted pursuant to the provisions of this
16 section.

17 B. Except as provided in Sections 22-24-4.3,
18 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
19 govern grant assistance from the fund for a public school
20 capital outlay project not wholly funded pursuant to Section
21 22-24-4.1 NMSA 1978:

22 (1) all school districts are eligible to apply
23 for funding from the fund, regardless of percentage of
24 indebtedness;

25 (2) priorities for funding shall be determined

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1 by using the statewide adequacy standards developed pursuant to
2 Subsection C of this section; provided that:

3 (a) the council shall apply the
4 standards to charter schools to the same extent that they are
5 applied to other public schools; and

6 (b) in an emergency in which the health
7 or safety of students or school personnel is at immediate risk
8 or in which there is a threat of significant property damage,
9 the council may award grant assistance for a project using
10 criteria other than the statewide adequacy standards;

11 (3) the council shall establish criteria to be
12 used in public school capital outlay projects that receive
13 grant assistance pursuant to the Public School Capital Outlay
14 Act. In establishing the criteria, the council shall consider:

15 (a) the feasibility of using design,
16 build and finance arrangements for public school capital outlay
17 projects;

18 (b) the potential use of more durable
19 construction materials that may reduce long-term operating
20 costs; [~~and~~]

21 (c) concepts that promote efficient but
22 flexible utilization of space; and

23 [~~e~~] (d) any other financing or
24 construction concept that may maximize the dollar effect of the
25 state grant assistance;

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1 (4) no more than ten percent of the combined
2 total of grants in a funding cycle shall be used for
3 retrofitting existing facilities for technology infrastructure;

4 (5) except as provided in Paragraph (6) or (8)
5 of this subsection, the state share of a project approved and
6 ranked by the council shall be funded within available
7 resources pursuant to the provisions of this paragraph. No
8 later than May 1 of each calendar year, a value shall be
9 calculated for each school district in accordance with the
10 following procedure:

11 (a) the final prior year net taxable
12 value for a school district divided by the MEM for that school
13 district is calculated for each school district;

14 (b) the final prior year net taxable
15 value for the whole state divided by the MEM for the state is
16 calculated;

17 (c) excluding any school district for
18 which the result calculated pursuant to Subparagraph (a) of
19 this paragraph is more than twice the result calculated
20 pursuant to Subparagraph (b) of this paragraph, the results
21 calculated pursuant to Subparagraph (a) of this paragraph are
22 listed from highest to lowest;

23 (d) the lowest value listed pursuant to
24 Subparagraph (c) of this paragraph is subtracted from the
25 highest value listed pursuant to that subparagraph;

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1 (e) the value calculated pursuant to
2 Subparagraph (a) of this paragraph for the subject school
3 district is subtracted from the highest value listed in
4 Subparagraph (c) of this paragraph;

5 (f) the result calculated pursuant to
6 Subparagraph (e) of this paragraph is divided by the result
7 calculated pursuant to Subparagraph (d) of this paragraph;

8 (g) the sum of the property tax mill
9 levies for the prior tax year imposed by each school district
10 on residential property pursuant to Chapter 22, Article 18 NMSA
11 1978, the Public School Capital Improvements Act, the Public
12 School Buildings Act, the Education Technology Equipment Act
13 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
14 is calculated for each school district;

15 (h) the lowest value calculated pursuant
16 to Subparagraph (g) of this paragraph is subtracted from the
17 highest value calculated pursuant to that subparagraph;

18 (i) the lowest value calculated pursuant
19 to Subparagraph (g) of this paragraph is subtracted from the
20 value calculated pursuant to that subparagraph for the subject
21 school district;

22 (j) the value calculated pursuant to
23 Subparagraph (i) of this paragraph is divided by the value
24 calculated pursuant to Subparagraph (h) of this paragraph;

25 (k) if the value calculated for a

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1 subject school district pursuant to Subparagraph (j) of this
2 paragraph is less than five-tenths, then, except as provided in
3 Subparagraph (n) or (o) of this paragraph, the value for that
4 school district equals the value calculated pursuant to
5 Subparagraph (f) of this paragraph;

6 (l) if the value calculated for a
7 subject school district pursuant to Subparagraph (j) of this
8 paragraph is five-tenths or greater, then that value is
9 multiplied by five-hundredths;

10 (m) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is five-tenths or greater, then the value calculated
13 pursuant to Subparagraph (l) of this paragraph is added to the
14 value calculated pursuant to Subparagraph (f) of this
15 paragraph. Except as provided in Subparagraph (n) or (o) of
16 this paragraph, the sum equals the value for that school
17 district;

18 (n) in those instances in which the
19 calculation pursuant to Subparagraph (k) or (m) of this
20 paragraph yields a value less than one-tenth, one-tenth shall
21 be used as the value for the subject school district;

22 (o) in those instances in which the
23 calculation pursuant to Subparagraph (k) or (m) of this
24 paragraph yields a value greater than one, one shall be used as
25 the value for the subject school district;

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1 (p) except as provided in Section
2 22-24-5.7 or 22-24-5.8 NMSA 1978 and except as [~~reduced~~
3 adjusted pursuant to Paragraph (6) or (8) of this subsection,
4 the amount to be distributed from the fund for an approved
5 project shall equal the total project cost multiplied by a
6 fraction the numerator of which is the value calculated for the
7 subject school district in the current year plus the value
8 calculated for that school district in each of the two
9 preceding years and the denominator of which is three; and

10 (q) as used in this paragraph: 1) "MEM"
11 means the average full-time-equivalent enrollment of students
12 attending public school in a school district on the eightieth
13 and one hundred twentieth days of the prior school year; [~~and~~
14 2) "total project cost" means the total amount necessary to
15 complete the public school capital outlay project less any
16 insurance reimbursement received by the school district for the
17 project; and 3) in the case of a state-chartered charter school
18 that has submitted an application for grant assistance pursuant
19 to this section, the "value calculated for the subject school
20 district" means the value calculated for the school district in
21 which the state-chartered charter school is physically located;

22 (6) the amount calculated pursuant to
23 Subparagraph (p) of Paragraph (5) of this subsection shall be
24 reduced by the following procedure:

25 (a) the total of all legislative

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1 appropriations made after January 1, 2003 for nonoperating
2 purposes either directly to the subject school district or to
3 another governmental entity for the purpose of passing the
4 money through directly to the subject school district, and not
5 rejected by the subject school district, [~~but excluding~~
6 ~~educational technology appropriations made prior to January 1,~~
7 ~~2005 and reauthorizations of appropriations previously made to~~
8 ~~the subject school district]~~ is calculated; provided that: 1)
9 an appropriation made in a fiscal year shall be deemed to be
10 accepted by a school district unless, prior to June 1 of that
11 fiscal year, the school district notifies the department of
12 finance and administration and the public education department
13 that the district is rejecting the appropriation; [~~provided~~
14 ~~further that the total shall be increased by an amount,~~
15 ~~certified to the council by the department, equal to the~~
16 ~~educational technology appropriations made to the subject~~
17 ~~school district on or after January 1, 2003 and prior to~~
18 ~~January 1, 2005 and not previously used to offset distributions~~
19 ~~pursuant to the Technology for Education Act]~~ 2) the total
20 shall exclude any educational technology appropriation made
21 prior to January 1, 2005 unless the appropriation was on or
22 after January 1, 2003 and not previously used to offset
23 distributions pursuant to the Technology for Education Act; 3)
24 the total shall exclude any appropriation previously made to
25 the subject school district that is reauthorized for

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1 expenditure by another recipient; 4) the total shall exclude
2 one-half of the amount of any appropriation made or
3 reauthorized after January 1, 2007 if the purpose of the
4 appropriation or reauthorization is to fund, in whole or in
5 part, a capital outlay project that, when prioritized by the
6 council pursuant to this section either in the immediately
7 preceding funding cycle or in the current funding cycle, ranked
8 in the top one hundred fifty projects statewide; and 5) unless
9 the grant award is made to the state-chartered charter school,
10 the total shall exclude appropriations made after January 1,
11 2007 for nonoperating purposes of a specific state-chartered
12 charter school, regardless of whether the charter school is a
13 state-chartered charter school at the time of the appropriation
14 or later opts to become a state-chartered charter school;

15 (b) the applicable fraction used for the
16 subject school district and the current calendar year for the
17 calculation in Subparagraph (p) of Paragraph (5) of this
18 subsection is subtracted from one;

19 (c) the value calculated pursuant to
20 Subparagraph (a) of this paragraph for the subject school
21 district is multiplied by the amount calculated pursuant to
22 Subparagraph (b) of this paragraph for that school district;

23 (d) the total amount of reductions for
24 the subject school district previously made pursuant to
25 Subparagraph (e) of this paragraph for other approved public

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1 school capital outlay projects is subtracted from the amount
2 calculated pursuant to Subparagraph (c) of this paragraph; and

3 (e) the amount calculated pursuant to
4 Subparagraph (p) of Paragraph (5) of this subsection shall be
5 reduced by the amount calculated pursuant to Subparagraph (d)
6 of this paragraph;

7 (7) as used in Paragraphs (5) and (6) of this
8 subsection, "subject school district" means the school district
9 that has submitted the application for funding and in which the
10 approved public school capital outlay project will be located;

11 (8) the council may adjust the amount of local
12 share otherwise required if it determines that a school
13 district has used all of its local resources. Before making
14 any adjustment to the local share, the council shall consider
15 whether:

16 (a) the school district has insufficient
17 bonding capacity over the next four years to provide the local
18 match necessary to complete the project and, for all
19 educational purposes, has a residential property tax rate of at
20 least ten dollars (\$10.00) on each one thousand dollars
21 (\$1,000) of taxable value, as measured by the sum of all rates
22 imposed by resolution of the local school board plus rates set
23 to pay interest and principal on outstanding school district
24 general obligation bonds;

25 (b) the school district: 1) has fewer

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1 than an average of eight hundred full-time-equivalent students
2 on the eightieth and one hundred twentieth days of the prior
3 school year; 2) has at least seventy percent of its students
4 eligible for free or reduced-fee lunch; 3) has a share of the
5 total project cost, as calculated pursuant to provisions of
6 this section, that would be greater than fifty percent; and 4)
7 for all educational purposes, has a residential property tax
8 rate of at least seven dollars (\$7.00) on each one thousand
9 dollars (\$1,000) of taxable value, as measured by the sum of
10 all rates imposed by resolution of the local school board plus
11 rates set to pay interest and principal on outstanding school
12 district general obligation bonds; or

13 (c) the school district has: 1) an
14 enrollment growth rate over the previous school year of at
15 least two and one-half percent; 2) pursuant to its five-year
16 facilities plan, will be building a new school within the next
17 two years; and 3) for all educational purposes, has a
18 residential property tax rate of at least ten dollars (\$10.00)
19 on each one thousand dollars (\$1,000) of taxable value, as
20 measured by the sum of all rates imposed by resolution of the
21 local school board plus rates set to pay interest and principal
22 on outstanding school district general obligation bonds; and

23 (9) no application for grant assistance from
24 the fund shall be approved unless the council determines that:

25 (a) the public school capital outlay

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1 project is needed and included in the school district's
2 five-year facilities plan among its top priorities;

3 (b) the school district has used its
4 capital resources in a prudent manner;

5 (c) the school district has provided
6 insurance for buildings of the school district in accordance
7 with the provisions of Section 13-5-3 NMSA 1978;

8 (d) the school district has submitted a
9 five-year facilities plan that includes: 1) enrollment
10 projections; 2) a current preventive maintenance plan that has
11 been approved by the council pursuant to Section 22-24-5.3 NMSA
12 1978 and that is followed by each public school in the
13 district; 3) the capital needs of charter schools located in
14 the school district; and 4) projections for the facilities
15 needed in order to maintain a full-day kindergarten program;

16 (e) the school district is willing and
17 able to pay any portion of the total cost of the public school
18 capital outlay project that, according to Paragraph (5), (6) or
19 (8) of this subsection, is not funded with grant assistance
20 from the fund; provided that school district funds used for a
21 project that was initiated after September 1, 2002 when the
22 statewide adequacy standards were adopted, but before September
23 1, 2004 when the standards were first used as the basis for
24 determining the state and school district share of a project,
25 may be applied to the school district portion required for that

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1 project;

2 (f) the application includes the capital
3 needs of any charter school located in the school district or
4 the school district has shown that the facilities of the
5 charter school have a smaller deviation from the statewide
6 adequacy standards than other district facilities included in
7 the application; and

8 (g) the school district has agreed, in
9 writing, to comply with any reporting requirements or
10 conditions imposed by the council pursuant to Section 22-24-5.1
11 NMSA 1978.

12 C. After consulting with the public school capital
13 outlay oversight task force and other experts, the council
14 shall regularly review and update statewide adequacy standards
15 applicable to all school districts. The standards shall
16 establish the acceptable level for the physical condition and
17 capacity of buildings, the educational suitability of
18 facilities and the need for technological infrastructure.
19 Except as otherwise provided in the Public School Capital
20 Outlay Act, the amount of outstanding deviation from the
21 standards shall be used by the council in evaluating and
22 prioritizing public school capital outlay projects.

23 D. The acquisition of a facility by a school
24 district or charter school pursuant to a financing agreement
25 that provides for lease payments with an option to purchase for

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1 a price that is reduced according to lease payments made may be
2 considered a public school capital outlay project and eligible
3 for grant assistance under this section pursuant to the
4 following criteria:

5 (1) no grant shall be awarded unless, prior to
6 use by the school district or charter school, the council finds
7 that the facility will equal or exceed the statewide adequacy
8 standards and the building standards for public school
9 facilities;

10 (2) no grant shall be awarded unless the
11 school district and the need for the facility meet all of the
12 requirements for grant assistance pursuant to the Public School
13 Capital Outlay Act;

14 (3) the total project cost shall equal the
15 total payments that would be due under the agreement if the
16 school district or charter school would eventually acquire
17 title to the facility;

18 (4) the portion of the total project cost to
19 be paid from the fund may be awarded as one grant, but
20 disbursements from the fund shall be made from time to time as
21 lease payments become due;

22 (5) the portion of the total project cost to
23 be paid by the school district shall be paid from time to time
24 as lease payments become due; and

25 (6) neither a grant award nor any provision of

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1 the Public School Capital Outlay Act creates a legal obligation
2 for the school district or charter school to continue the lease
3 from year to year or to purchase the facility.

4 E. In order to encourage private capital investment
5 in the construction of public school facilities, the purchase
6 of a privately owned school facility that is, at the time of
7 application, in use by a school district may be considered a
8 public school capital outlay project and eligible for grant
9 assistance pursuant to this section if the council finds that:

10 (1) at the time of the initial use by the
11 school district, the facility to be purchased equaled or
12 exceeded the statewide adequacy standards and the building
13 standards for public school facilities;

14 (2) at the time of application, attendance at
15 the facility to be purchased is at seventy-five percent or
16 greater of design capacity and the attendance at other schools
17 in the school district that the students at the facility would
18 otherwise attend is at eighty-five percent or greater of design
19 capacity; and

20 (3) the school district and the capital outlay
21 project meet all of the requirements for grant assistance
22 pursuant to the Public School Capital Outlay Act; provided
23 that, when determining the deviation from the statewide
24 adequacy standards for the purposes of evaluating and
25 prioritizing the project, the students using the facility shall

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1 be deemed to be attending other schools in the school district.

2 ~~[D-]~~ F. It is the intent of the legislature that
3 grant assistance made pursuant to this section allows every
4 school district to meet the standards developed pursuant to
5 Subsection C of this section; provided, however, that nothing
6 in the Public School Capital Outlay Act or the development of
7 standards pursuant to that act prohibits a school district from
8 using local funds to exceed the statewide adequacy standards.

9 ~~[E-]~~ G. Upon request, the council shall work with,
10 and provide assistance and information to, the public school
11 capital outlay oversight task force.

12 ~~[F-]~~ H. The council may establish committees or
13 task forces, not necessarily consisting of council members, and
14 may use the committees or task forces, as well as existing
15 agencies or organizations, to conduct studies, conduct surveys,
16 submit recommendations or otherwise contribute expertise from
17 the public schools, programs, interest groups and segments of
18 society most concerned with a particular aspect of the
19 council's work.

20 ~~[G-]~~ I. Upon the recommendation of the public
21 school facilities authority, the council shall develop building
22 standards for public school facilities and shall promulgate
23 other such rules as are necessary to carry out the provisions
24 of the Public School Capital Outlay Act.

25 ~~[H-]~~ J. No later than December 15 of each year, the

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1 council shall prepare a report summarizing its activities
2 during the previous fiscal year. The report shall describe in
3 detail all projects funded, the progress of projects previously
4 funded but not completed, the criteria used to prioritize and
5 fund projects and all other council actions. The report shall
6 be submitted to the public education commission, the governor,
7 the legislative finance committee, the legislative education
8 study committee and the legislature."

9 Section 5. A new section of the Public School Capital
10 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

11 "22-24-5.8. [NEW MATERIAL] SUPPLEMENTAL FUNDING FOR
12 PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

13 A. A school district receiving grant assistance
14 from the fund pursuant to Section 22-24-5 NMSA 1978 for a
15 public school capital outlay project shall receive an
16 additional grant from the fund in order for the project to
17 exceed the statewide adequacy standards if the school district
18 and proposed use of the additional grant qualify pursuant to
19 the provisions of Subsection B of this section.

20 B. A school district shall receive the additional
21 grant if the council determines that:

22 (1) in calculating the grant assistance from
23 the fund for the project pursuant to Section 22-24-5 NMSA 1978,
24 the value calculated for the school district pursuant to
25 Subparagraph (k), (m), (n) or (o) of Paragraph (5) of

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1 Subsection B of that section is equal to or greater than seven-
2 tenths;

3 (2) in the current year and at all times
4 during the previous three years, the school district has a
5 residential property tax rate of at least nine dollars (\$9.00)
6 on each one thousand dollars (\$1,000) of taxable value, as
7 measured by the sum of all rates imposed by resolution of the
8 local school board plus rates set to pay interest and principal
9 on outstanding school district general obligation bonds;

10 (3) at least seventy percent of the students
11 in the school district are eligible for free or reduced-fee
12 lunch;

13 (4) for the next four years, any local
14 resources of the school district will be expended for the local
15 match required for public school capital outlay projects and,
16 therefore, the school district will have no available local
17 resources to expend on the project so it is unlikely that the
18 project will ever exceed the statewide adequacy standards; and

19 (5) the planned use of the additional grant to
20 exceed the statewide adequacy standards will enhance public
21 school education in the school district and is a prudent use of
22 state money.

23 C. The amount of an additional grant awarded
24 pursuant to this section shall equal the total project cost
25 multiplied by the lesser of:

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1 (1) the value calculated for the school
2 district pursuant to Subparagraph (k), (m), (n) or (o) of
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978
4 minus six-tenths; or

5 (2) twenty-five hundredths.

6 D. All provisions of the Public School Capital
7 Outlay Act relating to the expenditure of other grants awarded
8 from the fund, including those provisions relating to
9 reporting, oversight, project access and accountability, apply
10 to the use and expenditure of additional grants made pursuant
11 to this section."

12 Section 6. Section 22-25-1 NMSA 1978 (being Laws 1975
13 (S.S.), Chapter 5, Section 1) is amended to read:

14 "22-25-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article 25
15 NMSA 1978 may be cited as the "Public School Capital
16 Improvements Act"."

17 Section 7. Section 22-25-2 NMSA 1978 (being Laws 1975
18 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

19 "22-25-2. DEFINITIONS.--As used in the Public School
20 Capital Improvements Act:

21 A. "program unit" means the product of the program
22 element multiplied by the applicable cost differential factor,
23 as defined in Section 22-8-2 NMSA 1978; and

24 B. "capital improvements" means expenditures,
25 including payments made with respect to lease-purchase

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1 arrangements as defined in the Education Technology Equipment
2 Act but excluding any other debt service expenses, for:

3 (1) erecting, remodeling, making additions to,
4 providing equipment for or furnishing public school buildings;

5 (2) payments made pursuant to a financing
6 agreement entered into by a school district or a charter school
7 for the leasing of a building or other real property with an
8 option to purchase for a price that is reduced according to
9 payments made;

10 [~~(2)~~] (3) purchasing or improving public
11 school grounds;

12 [~~(3)~~] (4) maintenance of public school
13 buildings or public school grounds, including payments under
14 contracts for maintenance support services and expenditures for
15 technical training and certification for maintenance and
16 facilities management personnel, but excluding salary expenses
17 of school district employees;

18 [~~(4)~~] (5) purchasing activity vehicles for
19 transporting students to extracurricular school activities;
20 [~~and~~] or

21 [~~(5)~~] (6) purchasing computer software and
22 hardware for student use in public school classrooms."

23 Section 8. Section 22-25-9 NMSA 1978 (being Laws 1975
24 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

25 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING

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1 TAX UNDER CERTAIN CIRCUMSTANCES.--

2 A. Except as provided in Section 22-25-11 NMSA 1978
3 and in Subsection C or G of this section, the secretary shall
4 distribute to any school district that has imposed a tax under
5 the Public School Capital Improvements Act an amount from the
6 public school capital improvements fund that is equal to the
7 amount by which the revenue estimated to be received from the
8 imposed tax, at the rate certified by the department of finance
9 and administration in accordance with Section 22-25-7 NMSA
10 1978, assuming a one hundred percent collection rate, is less
11 than an amount calculated by multiplying the school district's
12 first forty days' total program units by the amount specified
13 in Subsection B of this section and further multiplying the
14 product obtained by the tax rate approved by the qualified
15 electors in the most recent election on the question of
16 imposing a tax under the Public School Capital Improvements
17 Act. The distribution shall be made each year that the tax is
18 imposed in accordance with Section 22-25-7 NMSA 1978; provided
19 that no state distribution from the public school capital
20 improvements fund may be used for capital improvements to any
21 administration building of a school district. In the event
22 that sufficient funds are not available in the public school
23 capital improvements fund to make the state distribution
24 provided for in this section, the dollar per program unit
25 figure shall be reduced as necessary.

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1 B. In calculating the state distribution pursuant
2 to Subsection A of this section, the following amounts shall be
3 used:

4 (1) the amount calculated pursuant to
5 Subsection D of this subsection per program unit; and

6 (2) an additional amount certified to the
7 secretary by the public school capital outlay council. No
8 later than June 1 of each year, the council shall determine the
9 amount needed in the next fiscal year for public school capital
10 outlay projects pursuant to the Public School Capital Outlay
11 Act and the amount of revenue, from all sources, available for
12 the projects. If, in the sole discretion of the council, the
13 amount available exceeds the amount needed, the council may
14 certify an additional amount pursuant to this paragraph;
15 provided that the sum of the amount calculated pursuant to this
16 paragraph plus the amount in Paragraph (1) of this subsection
17 shall not result in a total statewide distribution that, in the
18 opinion of the council, exceeds one-half of the total revenue
19 estimated to be received from taxes imposed pursuant to the
20 Public School Capital Improvements Act.

21 C. For any fiscal year notwithstanding the amount
22 calculated to be distributed pursuant to Subsections A and B of
23 this section, except as provided in Subsection G of this
24 section, a school district, the voters of which have approved a
25 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a

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1 distribution less than the amount calculated pursuant to
2 Subsection E of this section, multiplied by the school
3 district's first forty days' total program units and further
4 multiplying the product obtained by the approved tax rate.

5 D. For purposes of calculating the distribution
6 pursuant to Subsection B of this section, the amount used in
7 Paragraph (1) of that subsection shall equal [~~sixty dollars~~
8 ~~(\$60.00) in fiscal year 2006~~] seventy dollars (\$70.00) in
9 fiscal year 2008 and in each subsequent fiscal year shall equal
10 the amount for the previous fiscal year adjusted by the
11 percentage increase between the next preceding calendar year
12 and the preceding calendar year of the consumer price index for
13 the United States, all items, as published by the United States
14 department of labor.

15 E. For purposes of calculating the minimum
16 distribution pursuant to Subsection C of this section, the
17 amount used in that subsection shall equal five dollars (\$5.00)
18 through fiscal year 2005 and in each subsequent fiscal year
19 shall equal the amount for the previous fiscal year adjusted by
20 the percentage increase between the next preceding calendar
21 year and the preceding calendar year of the consumer price
22 index for the United States, all items, as published by the
23 United States department of labor.

24 F. In expending distributions made pursuant to this
25 section, school districts shall give priority to maintenance

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1 projects, including payments under contracts for maintenance
2 support services. In addition, distributions made pursuant to
3 this section may be expended by school districts for the school
4 district portion of:

5 (1) the total project cost for roof repair or
6 replacement required by Section 22-24-4.3 NMSA 1978; or

7 (2) payments made under a financing agreement
8 entered into by a school district or a charter school for the
9 leasing of a building or other real property with an option to
10 purchase for a price that is reduced according to the payments
11 made, if the school district has received a grant for the state
12 share of the payments pursuant to Subsection D of Section
13 22-24-5 NMSA 1978.

14 G. If a serious deficiency in a roof of a public
15 school facility has been corrected pursuant to Section
16 22-24-4.4 NMSA 1978 and the school district has refused to pay
17 its share of the cost as determined by that section, until the
18 public school capital outlay fund is reimbursed in full for the
19 share attributed to the district, the distribution calculated
20 pursuant to this section shall not be made to the school
21 district but shall be made to the public school capital outlay
22 fund.

23 H. In making distributions pursuant to this
24 section, the secretary shall include such reporting
25 requirements and conditions as are required by rule of the

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1 public school capital outlay council. The council shall adopt
2 such requirements and conditions as are necessary to ensure
3 that the distributions are expended in the most prudent manner
4 possible and are consistent with the original purpose as
5 specified in the authorizing resolution. Copies of reports or
6 other information received by the secretary in response to the
7 requirements and conditions shall be forwarded to the council."

8 Section 9. Section 7-38-38.1 NMSA 1978 (being Laws 1986,
9 Chapter 20, Section 116, as amended) is amended to read:

10 "7-38-38.1. RECIPIENTS OF REVENUE PRODUCED THROUGH AD
11 VALOREM LEVIES REQUIRED TO PAY COUNTIES ADMINISTRATIVE CHARGE
12 TO OFFSET COLLECTION COSTS.--

13 A. As used in this section:

14 (1) "revenue" means money for which a county
15 treasurer has the legal responsibility for collection and which
16 is owed to a revenue recipient as a result of an imposition
17 authorized by law of a rate expressed in mills per dollar or
18 dollars per thousands of dollars of net taxable value of
19 property, assessed value of property or a similar term,
20 including but not limited to money resulting from the
21 authorization of rates and impositions under Subsection B and
22 Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA
23 1978, special levies for special purposes and benefit
24 assessments, but the term does not include any money resulting
25 from the imposition of taxes imposed under the provisions of

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1 the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas
2 Production Equipment Ad Valorem Tax Act or the Copper
3 Production Ad Valorem Tax Act or money resulting from
4 impositions under Paragraph (3) of Subsection C of Section
5 7-37-7 NMSA 1978; and

6 (2) "revenue recipient" means the state and
7 any of its political subdivisions, including charter schools
8 but excluding institutions of higher education located in class
9 A counties and class B counties having more than three hundred
10 million dollars (\$300,000,000) valuation, that are authorized
11 by law to receive revenue.

12 B. Prior to the distribution to a revenue recipient
13 of revenue received by a county treasurer, the treasurer shall
14 deduct as an administrative charge an amount equal to one
15 percent of the revenue received.

16 C. The "county property valuation fund" is created.
17 All administrative charges deducted by the county treasurer
18 shall be distributed to the county property valuation fund.

19 D. Expenditures from the county property valuation
20 fund shall be made pursuant to a property valuation program
21 presented by the county assessor and approved by the majority
22 of the county commissioners."

23 Section 10. Section 22-8B-4 NMSA 1978 (being Laws 1999,
24 Chapter 281, Section 4, as amended) is amended to read:

25 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--

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1 OPERATION.--

2 A. A charter school shall be subject to all federal
3 and state laws and constitutional provisions prohibiting
4 discrimination on the basis of disability, race, creed, color,
5 gender, national origin, religion, ancestry or need for special
6 education services.

7 B. A charter school shall be governed by a
8 governing body in the manner set forth in the charter; provided
9 that a governing body shall have at least five members; and
10 provided further that no member of a governing body for a
11 charter school that is initially approved on or after July 1,
12 2005 or whose charter is renewed on or after July 1, 2005 shall
13 serve on the governing body of another charter school.

14 C. A charter school shall be responsible for:

15 (1) its own operation, including preparation
16 of a budget, subject to audits pursuant to the Audit Act; and

17 (2) contracting for services and personnel
18 matters.

19 D. A charter school may contract with a school
20 district, a university or college, the state, another political
21 subdivision of the state, the federal government or one of its
22 agencies, a tribal government or any other third party for the
23 use of a facility, its operation and maintenance and the
24 provision of any service or activity that the charter school is
25 required to perform in order to carry out the educational

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1 program described in its charter. Facilities used by a charter
2 school shall meet the standards required pursuant to Section
3 22-8B-4.2 NMSA 1978.

4 E. A conversion school chartered before July 1,
5 2007 may choose to continue using the school district
6 facilities and equipment it had been using prior to conversion,
7 subject to the provisions of Subsection F of this section.

8 F. The school district in which a charter school is
9 geographically located shall provide a charter school with
10 available facilities for the school's operations unless the
11 facilities are currently used for other educational purposes.

12 ~~[A charter school shall not be required to pay rent for the~~
13 ~~school district facilities if the facilities can be provided at~~
14 ~~no cost to the school district. If facilities are available~~
15 ~~but cannot be provided at no cost to the school district, the~~
16 ~~school district shall not charge more than the actual direct~~
17 ~~cost of providing the facilities.]~~ An agreement for the use of

18 school district facilities by a charter school may provide for
19 reasonable lease payments; provided that the payments do not
20 exceed the sum of the lease reimbursement rate provided in
21 Subparagraph (b) of Paragraph (1) of Subsection I of Section
22 22-24-4 NMSA 1978 plus any reimbursement for actual direct
23 costs incurred by the school district in providing the
24 facilities; and, provided further, that any lease payments
25 received by a school district may be retained by the school

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1 district and shall not be considered to be cash balances in any
2 calculation pursuant to Section 22-8-41 NMSA 1978. The
3 available facilities provided by a school district to a charter
4 school shall meet all occupancy standards as specified by the
5 public school capital outlay council. As used in this
6 subsection, "other educational purposes" includes health
7 clinics, daycare centers, teacher training centers, school
8 district administration functions and other ancillary services
9 related to a school district's functions and operations.

10 G. A locally chartered charter school may pay the
11 costs of operation and maintenance of its facilities or may
12 contract with the school district to provide facility operation
13 and maintenance services.

14 H. Locally chartered charter school facilities are
15 eligible for state and local capital outlay funds and shall be
16 included in the school district's five-year facilities plan.

17 I. A locally chartered charter school shall
18 negotiate with a school district to provide transportation to
19 students eligible for transportation under the provisions of
20 the Public School Code. The school district, in conjunction
21 with the charter school, may establish a limit for student
22 transportation to and from the charter school site not to
23 extend beyond the school district boundary.

24 J. A charter school shall be a nonsectarian,
25 nonreligious and non-home-based public school.

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1 K. Except as otherwise provided in the Public
2 School Code, a charter school shall not charge tuition or have
3 admission requirements.

4 L. With the approval of the chartering authority, a
5 single charter school may maintain separate facilities at two
6 or more locations within the same school district; but, for
7 purposes of calculating program units pursuant to the Public
8 School Finance Act, the separate facilities shall be treated
9 together as one school.

10 M. A charter school shall be subject to the
11 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
12 Accountability Act.

13 N. Within constitutional and statutory limits, a
14 charter school may acquire and dispose of property; provided
15 that, upon termination of the charter, all assets of the
16 locally chartered charter school shall revert to the local
17 school board and all assets of the state-chartered charter
18 school shall revert to the state, except that, if all or any
19 portion of a state-chartered charter school facility is
20 financed with the proceeds of general obligation bonds issued
21 by a local school board, the facility shall revert to the local
22 school board.

23 O. The governing body of a charter school may
24 accept or reject any charitable gift, grant, devise or bequest;
25 provided that no such gift, grant, devise or bequest shall be

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1 accepted if subject to any condition contrary to law or to the
2 terms of the charter. The particular gift, grant, devise or
3 bequest shall be considered an asset of the charter school to
4 which it is given.

5 P. The governing body may contract and sue and be
6 sued. A local school board shall not be liable for any acts or
7 omissions of the charter school.

8 Q. A charter school shall comply with all state and
9 federal health and safety requirements applicable to public
10 schools, including those health and safety codes relating to
11 educational building occupancy.

12 R. A charter school is a public school that may
13 contract with a school district or other party for provision of
14 financial management, food services, transportation,
15 facilities, education-related services or other services. The
16 governing body shall not contract with a for-profit entity for
17 the management of the charter school.

18 S. To enable state-chartered charter schools to
19 submit required data to the department, an accountability data
20 system shall be maintained by the department.

21 T. A charter school shall comply with all
22 applicable state and federal laws and rules related to
23 providing special education services. Charter school students
24 with disabilities and their parents retain all rights under the
25 federal Individuals with Disabilities Education Act and its

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1 implementing state and federal rules. Each charter school is
2 responsible for identifying, evaluating and offering a free
3 appropriate public education to all eligible children who are
4 accepted for enrollment in that charter school. The state-
5 chartered charter school, as a local educational agency, shall
6 assume responsibility for determining students' needs for
7 special education and related services. The division may
8 promulgate rules to implement the requirements of this
9 subsection."

10 Section 11. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
11 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2)
12 is amended to read:

13 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

14 A. The facilities of a charter school that is
15 approved on or after July 1, 2005 and before July 1, 2010 shall
16 meet educational occupancy standards required by applicable New
17 Mexico construction codes.

18 B. The facilities of a charter school that is in
19 existence, or has been approved, prior to July 1, 2005 shall be
20 evaluated, prioritized and eligible for grants pursuant to the
21 Public School Capital Outlay Act in the same manner as all
22 other public schools in the state; provided that for charter
23 school facilities in leased facilities, grants may be used as
24 additional lease payments for leasehold improvements.

25 C. On or after July 1, 2010, an application for a

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1 charter shall not be approved and an existing charter shall not
2 be renewed unless the charter school:

3 (1) is housed in a public building that is:

4 (a) owned by the charter school, the
5 school district, the state, an institution of the state,
6 another political subdivision of the state, the federal
7 government or one of its agencies or a tribal government; and

8 (b) subject to evaluation and
9 prioritization and eligible for grants pursuant to the Public
10 School Capital Outlay Act in the same manner as all other
11 public schools in the state; [~~or~~]

12 (2) is housed in a building that meets the
13 statewide adequacy standards developed pursuant to the Public
14 School Capital Outlay Act and that is being leased by the
15 charter school pursuant to a financing agreement that contains
16 an option to purchase for a price that is reduced according to
17 the lease payments made; or

18 [~~(2)~~] (3) if it is not housed in a [~~public~~]
19 building described in Paragraph (1) or (2) of this subsection,
20 demonstrates that:

21 (a) the facility in which the charter
22 school is housed meets the statewide adequacy standards
23 developed pursuant to the Public School Capital Outlay Act and
24 the owner of the facility is contractually obligated to
25 maintain those standards at no additional cost to the charter

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1 school or the state; and

2 (b) either: 1) public buildings are not
3 available or adequate for the educational program of the
4 charter school; or 2) the owner of the facility is a nonprofit
5 entity specifically organized for the purpose of providing the
6 facility for the charter school.

7 D. The public school capital outlay council:

8 (1) shall determine whether facilities of a
9 charter school meet the educational occupancy standards
10 pursuant to the requirements of Subsection A of this section;

11 (2) shall determine whether facilities of a
12 charter school meet the requirements of Subsections B and C of
13 this section; and

14 (3) upon a determination that specific
15 requirements are not appropriate or reasonable for a charter
16 school, may grant a variance from those requirements for that
17 charter school."

18 Section 12. A new section of the Public School Capital
19 Improvements Act, Section 22-25-11 NMSA 1978, is enacted to
20 read:

21 "22-25-11. [NEW MATERIAL] AUTHORIZATION FOR ADDITIONAL
22 MILLAGE.--

23 A. In addition to the tax imposed pursuant to
24 Section 22-25-3 NMSA 1978, a local school board may adopt a
25 resolution to submit to the qualified electors of the school

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1 district the question of whether a property tax should be
2 imposed upon the net taxable value of property allocated to the
3 school district under the Property Tax Code at a rate not to
4 exceed that specified in the resolution for the purpose of
5 capital improvements in the school district. The resolution
6 shall:

7 (1) identify the capital improvements for
8 which the revenue proposed to be produced will be used;

9 (2) specify the rate of the proposed tax,
10 which shall not exceed one dollar (\$1.00) on each one thousand
11 dollars (\$1,000) of net taxable value of property allocated to
12 the school district under the Property Tax Code;

13 (3) specify the date an election will be held
14 to submit the question of imposition of the tax to the
15 qualified electors of the school district; and

16 (4) limit the imposition of the proposed tax
17 to no more than six property tax years.

18 B. The revenue produced by the application of the
19 additional tax levy shall be shared among all public schools in
20 the school district, including locally chartered and state-
21 chartered charter schools, and shall be in the same proportion
22 as the average full-time-equivalent enrollment of each school
23 on the fortieth day of the prior school year is to the total
24 such enrollment in the district; provided that, in the case of
25 a school that had not commenced classroom instruction in the

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1 prior school year, the proportion shall be based on the
2 estimated full-time-equivalent enrollment of the school and the
3 school district on the fortieth day of the current school year,
4 as determined by the department.

5 C. All provisions of the Public School Capital
6 Improvements Act that apply to the tax imposition provided for
7 in Section 22-25-3 NMSA 1978 apply to the tax imposition
8 provided for in this section except that a tax imposed pursuant
9 to this section shall not be taken into account when
10 calculating the state distribution pursuant to Section 22-25-9
11 NMSA 1978."

12 Section 13. Section 22-26-1 NMSA 1978 (being Laws 1983,
13 Chapter 163, Section 1) is amended to read:

14 "22-26-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article 26
15 NMSA 1978 may be cited as the "Public School Buildings Act"."

16 Section 14. Section 22-26-2 NMSA 1978 (being Laws 1983,
17 Chapter 163, Section 2, as amended) is amended to read:

18 "22-26-2. ~~[DEFINITIONS]~~ DEFINITION.--As used in the
19 Public School Buildings Act, "capital improvements" means
20 expenditures, including payments made with respect to lease-
21 purchase arrangements as defined in the Education Technology
22 Equipment Act but excluding any other debt service expenses,
23 for:

24 A. erecting, remodeling, making additions to,
25 providing equipment for or furnishing public school buildings;

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1 ~~[and]~~

2 B. payments made pursuant to a financing agreement
3 entered into by a school district or a charter school for the
4 leasing of a building or other real property with an option to
5 purchase for a price that is reduced according to payments
6 made;

7 ~~[B.]~~ C. purchasing or improving public school
8 grounds; or

9 D. administering the projects undertaken pursuant
10 to Subsections A and C of this section, including expenditures
11 for facility maintenance software, project management software,
12 project oversight and district personnel specifically related
13 to administration of projects funded by the Public School
14 Buildings Act; provided that expenditures pursuant to this
15 subsection shall not exceed five percent of the total project
16 costs."

17 Section 15. Section 22-26-3 NMSA 1978 (being Laws 1983,
18 Chapter 163, Section 3, as amended) is amended to read:

19 "22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
20 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--~~[Any]~~

21 A. A local school board may adopt a resolution to
22 submit to the qualified electors of the school district the
23 question of whether a property tax at a rate not to exceed the
24 rate specified in the resolution should be imposed upon the net
25 taxable value of property allocated to the school district

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1 under the Property Tax Code for the purpose of capital
2 improvements to public schools in the school district. The
3 resolution shall:

4 (1) identify the capital improvements for
5 which the revenue proposed to be produced will be used;

6 [~~A.~~] (2) specify the rate of the proposed tax,
7 which shall not exceed ten dollars (\$10.00) on each one
8 thousand dollars (\$1,000) of net taxable value of property
9 allocated to the school district under the Property Tax Code;

10 [~~B.~~] (3) specify the date an election will be
11 held to submit the question of imposition of the tax to the
12 qualified electors of the district; and

13 [~~C.~~] (4) limit the imposition of the proposed
14 tax to no more than [~~five~~] six property tax years.

15 B. After July 1, 2007, a resolution submitted to
16 the qualified electors pursuant to Subsection A of this section
17 shall include capital improvements funding for locally
18 chartered and state-chartered charter schools located within
19 the school district. Each charter school shall provide the
20 necessary information to the school district for inclusion on
21 the resolution that identifies the capital improvements of the
22 charter school for which the revenue proposed to be produced
23 will be used."

24 Section 16. Section 22-26-5 NMSA 1978 (being Laws 1983,
25 Chapter 163, Section 5, as amended) is amended to read:

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1 "22-26-5. CONDUCT OF ELECTION--NOTICE--BALLOT.--

2 A. An election on the question of imposing a tax
3 under the Public School Buildings Act may be held in
4 conjunction with a regular school district election or may be
5 conducted as or held in conjunction with a special school
6 district election, but the election shall be held prior to July
7 1 of the property tax year in which the tax is proposed to be
8 imposed. Conduct of the election shall be as prescribed in the
9 School Election Law for regular and special school district
10 elections.

11 B. The resolution required to be published as
12 notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978
13 shall include as the question to be submitted to the voters
14 whether a property tax at a rate not to exceed the rate
15 specified in the authorizing resolution should be imposed for
16 the specified number of property tax years not exceeding [~~five~~]
17 six years upon the net taxable value of all property allocated
18 to the school district for capital improvements.

19 C. The ballot shall include the information
20 specified in Subsection B of this section and shall present the
21 voter the choice of voting "for the public school buildings
22 tax" or "against the public school buildings tax".

23 Section 17. Section 22-26-8 NMSA 1978 (being Laws 1983,
24 Chapter 163, Section 8, as amended) is amended to read:

25 "22-26-8. TAX TO BE IMPOSED FOR A MAXIMUM OF [~~FIVE~~] SIX

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1 YEARS.--A tax imposed in a school district as a result of an
2 election under the Public School Buildings Act shall be imposed
3 for one, two, three, four, [~~or~~] five or six years commencing
4 with the property tax year in which the election was held. The
5 local school board may direct that such levy be decreased or
6 not made for any year if, in its judgment, the total levy is
7 not necessary for such year and shall direct that the levy be
8 decreased by the amount required if a decrease is required by
9 operation of the rate limitation provisions of Section 7-37-7.1
10 NMSA 1978."

11 Section 18. A new section of the Public School Buildings
12 Act is enacted to read:

13 "[NEW MATERIAL] CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY
14 TAX REVENUE.--If, in an election held after July 1, 2007, the
15 qualified electors of a school district have voted in favor of
16 the imposition of a property tax as provided in Section 22-26-3
17 NMSA 1978, the amount of tax revenue to be distributed to each
18 charter school shall be determined each year and shall be in
19 the same proportion as the average full-time-equivalent
20 enrollment of the charter school on the fortieth day of the
21 prior school year is to the total such enrollment in the
22 district; provided that, in the case of an approved charter
23 school that had not commenced classroom instruction in the
24 prior school year, the estimated full-time-equivalent
25 enrollment in the first year of instruction, as shown in the

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1 approved charter school application, shall be used, subject to
2 adjustment after the fortieth day. Each year, the department
3 shall certify to the county treasurer of the county in which
4 the charter schools in the school district are located the
5 percentage of the revenue to be distributed to each charter
6 school. The county treasurer shall distribute the charter
7 school's share of the property tax revenue directly to the
8 charter school."

9 Section 19. TEMPORARY PROVISION--RECOMPILATION
10 INSTRUCTIONS.--The compiler shall recompile Section 22-24-11
11 NMSA 1978 (being Laws 2006, Chapter 95, Section 3) as part of
12 the Public School Finance Act.

13 Section 20. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.